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ON

October 12, 2005
Mark B. Quatt
Mark B. Quatt Registration No. 30,484

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Caudle	Docket No:	D-43260-04
Serial No.:	09/846,714	Examiner:	Jes F. Pascua
Filing Date:	May 1, 2001	GAU:	3727
Title:	Contoured Pouch With Pourable Spout, and Apparatus and Process for Producing Same		

APPEAL BRIEF

Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is being filed in support of a Notice of Appeal filed on August 19, 2005, in which the Applicants appealed from the rejection of claim 50 in the Office Action dated May 20, 2005.

The Commissioner is authorized to charge the fee of \$500 for filing an Appeal Brief, to Deposit Account No. 07-1765.

The Commissioner is authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. 07-1765.

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Cryovac, Inc
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10-12-05
date

Respectfully submitted,

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Real Party in Interest

The real party in interest in this patent application is Cryovac, Inc.

Related Appeals and Interferences

There are no other appeals or interferences known to Applicants, the Applicants' legal representative, or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

The claim now on Appeal is claim 50.

This application was filed on May 1, 2001 along with a Preliminary Amendment that canceled claims 1 to 49, and added 50 to 55.

An Office Action mailed December 27, 2001 rejected claims 50 to 55.

An amendment filed April 5, 2002 canceled claims 54 and 55.

A Final Office Action mailed May 9, 2002 again rejected claims 50 to 53.

The final rejection was appealed on June 19, 2002, a Brief filed September 26, 2002, and an Examiner's Answer mailed October 16, 2002.

On June 23, 2002, the Board of Patent Appeals and Interferences reversed the Final Office Action.

An Office Action mailed October 3, 2003 rejected claims 50 to 53.

A response was filed by the applicant on November 10, 2003.

An Office Action mailed December 30, 2003 again rejected claims 50 to 53.

A response was filed by the applicant on April 21, 2004, canceling claims 52 and 53.

A Notice of Non-Compliant Amendment was mailed May 18, 2004.

A response to the Notice was filed June 1, 2004.

A Final Office Action mailed July 19, 2004 again rejected claims 50 and 51.

An Amendment after Final was filed August 25, 2004, in which it was proposed that claim 50 be amended and claim 51 canceled.

An Advisory Action was mailed September 24, 2004, indicating that the proposed amendment would not be entered.

An RCE was filed on October 7, 2004 along with a Preliminary Amendment in which claim 50 was amended and claim 51 was canceled.

An Office Action mailed December 3, 2004 again rejected claim 50.

A response was filed by the applicant on April 6, 2005.

A Final Office Action mailed May 20, 2005 again rejected claim 50.

Applicant thereafter filed the Notice of Appeal on August 19, 2005.

A copy of the claims presently on Appeal appears in the Appendix.

Status of Amendments

No amendments have been submitted after the Final Action.

A copy of the claims presently on Appeal appears in the Appendix.

Summary of the Invention

[References to the specification by page and line numbers, and to the drawings by Figure number and reference number, are shown in parentheses.]

Pouches made from films or laminates, including polymers such as polyethylene or polypropylene, have found use in a variety of applications. For example, such pouches are used to hold low viscosity fluids (e.g., juice and soda), high viscosity fluids (e.g., condiments and sauces), fluid/solid mixtures (e.g., soups), gels, powders, and pulverulent materials. The benefit of such pouches lies, at least in part, in the fact that such pouches are easy to store prior to filling and produce very little waste when discarded. The pouches can be formed into a variety of sizes and shapes. One type of pouch is designed to lie on a supporting surface and is generally known as a pillow-type pouch. Alternatively, pouches have been described which include a base for maintaining the pouch in an upright configuration. (page 1, lines 9 to 18).

Pouches can be assembled from films, laminates, or web materials using form-fill-seal machines. Such machines receive the film, laminate, or web material and manipulate the material to form the desired shape. For example, one or more films, laminates, and/or web materials can be folded and oriented to produce the desired shape. Once formed, the edges of the pouch are sealed and the pouch filled. Typically, the film, laminate, or web material has at least one heat seal layer or adhesive surface which enables the edges to be sealed by the application of heat. During the sealing process, a portion of at least one edge of the pouch is left unsealed until after the pouch is filled. The pouch is filled through the unsealed portion and the unsealed portion is then sealed. Alternatively, the pouch can be filled and the unsealed portion simultaneously closed in order to provide a sealed pouch with minimal headspace. (page 1, line 19 to page 2, line 9).

Although a variety of pouches have been previously described, none of the known pouches provide ergonomically contoured edges while still providing a pouch which can be manufactured on form-fill-seal machines without generating appreciable, and preferably without generating any, scrap material between subsequent pouches. (page 2, lines 10 to 13).

The present invention overcomes the shortcomings of known pouches by providing a pouch which is ergonomically designed to be easily handled, and can be produced, filled and sealed on a form-fill-seal machine without generating any appreciable scrap material between subsequent pouches. (page 2, lines 14 to 24).

In accordance with the invention, a single pouch comprising a first lateral edge (Figures 1 and 19, reference numeral 26) and a second lateral edge (Figures 1 and 19, reference numeral 27), each of the first and the second lateral edges comprising a concave surface and a convex surface, wherein the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge and the convex surface of the first lateral edge is substantially opposite the concave surface of the second lateral edge; wherein the first lateral edge and the second lateral edge each comprise a heat seal; and wherein both the first and the second lateral edges are substantially S-shaped. (page 2, lines 25 to 30; page 3, lines 6 to 7 and 25 to 26; and page 7, lines 8 to 9).

Issues to be reviewed on Appeal

The issues to be reviewed on Appeal (per the Office Action mailed June 29, 2005) are as follows:

1. Claim 50 stands rejected under 35 U.S.C. §103 (a) as being unpatentable over Campbell (GB 303,593) in view of Hubbard et al. (US 4,688,572).

Argument

1. Claim 50 is patentable under 35 U.S.C. §103 (a) over Campbell (GB 303,593) in view of Hubbard et al. (US 4,688,572).

The May 20, 2005 Office Action states that it is unclear if the opposing lateral edges [of Campbell] comprise heat seals. Applicant respectfully takes the position that

- 1) Campbell does not disclose heat seals; and
- 2) if it is unclear if the opposing lateral edges [of Campbell] comprise heat seals, then there is no motivation to combine the uncertain showing of Campbell with Hubbard et al. to arrive at the invention of claim 50.

The May 20, 2005 Office Action also states that the edges extending out from the left and right side of the funnel-like portion in Campbell comprise a substantially S-shape to the same degree as claimed. The applicant respectfully traverses, and takes the position that Campbell simply does not show first and second lateral edges both substantially S-shaped.

The applicant therefore respectfully submits that claim 50 as now presented is patentable over Campbell in view of Hubbard et al., and asks the Board to reverse the findings of the Office Action of May 20, 2005.

Claims Appendix

50. A single pouch comprising a first lateral edge and a second lateral edge, each of the first and the second lateral edges comprising a concave surface and a convex surface, wherein the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge and the convex surface of the first lateral edge is substantially opposite the concave surface of the second lateral edge;
wherein the first lateral edge and the second lateral edge each comprise a heat seal;
and
wherein both the first and the second lateral edges are substantially S-shaped.

Evidence Appendix

No evidence described in 37 CFR §41.37(ix) was submitted by Appellant or entered by the Examiner.

Related Proceedings Appendix

There are no other appeals, interferences or judicial proceedings known to Appellant, Appellant's legal representative, or Assignee which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.